

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

<p>In re:</p> <p>ELECTRO SALES & SERVICES, INC.</p> <p style="text-align: center;"><i>Debtor.</i></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>CASE NO. 21-50546-MMP</p> <p>Chapter 11</p>
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<p>MR. W FIREWORKS, INC.</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>v.</p> <p>ELECTRO SALES & SERVICE, INC., 2317 PINN ROAD INVESTMENT INC., SHEBILO MANAGEMENT, INC.</p> <p style="text-align: center;"><i>Defendants.</i></p> <p>v.</p> <p>SALIM MERCHANT,</p> <p style="text-align: center;"><i>Third Party Defendant.</i></p> <p>JOSE C. RODRIQUEZ</p> <p style="text-align: center;"><i>Third Party Defendant.</i></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>ADVERSARY PROCEEDING</p> <p>NO. 22-05045</p>
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DEFENDANT SHEBILO MANAGEMENT, INC.'S
ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

TO THE HONORABLE MICHAEL M. PARKER:

COMES NOW, Defendant Shebilo Management, Inc. hereinafter “Defendant” in the above-styled adversary proceeding and files its *Defendant Shebilo Management, Inc.’s Answer to Plaintiff’s Second Amended Complaint* (Doc 106) and would show the court as follows.

I. ANSWER

1. Defendant admits the allegations in paragraphs 1 through 8 of the Plaintiff’s Second Amended Complaint (hereinafter “Complaint.”)

2. Defendant is unable to admit or deny the allegations in paragraphs 9 through 52 of the Complaint.

II. AFFIRMATIVE DEFENSES

3. Defendant would show that it is a bona fide lender having loan funds for the acquisition of the property without notice or knowledge of that Plaintiff had a valid claim against the property. Defendant loaned value and in good faith for the property.

4. Defendant would show that the lease and contract between the Debtor and Plaintiff were not made in the ordinary course of business under 11 U.S.C. § 363.

5. Defendant would show that the Plaintiff's lease and contract are void because they were post-petition transactions that were made without notice to creditors or the bankruptcy court and were entered without bankruptcy court approval.

6. Defendant would show that Plaintiff does not have an interest in the property in dispute, that it has no title, that the title of the property in dispute is not affected by a claim of the Plaintiff, that Plaintiff's claim is not facially valid and is invalid and unenforceable. Defendant would further show that Plaintiff has admitted to actual notice of a higher and better offer for the purchase of the Property and did not exercise any alleged first right of refusal at any time after receipt of notice of a superior offer.

7. Defendant requests that the court expunge the lis pendens under Section 12.0071 of the Texas Property Code.

III. COUNTERCLAIM

A. Equitable Subrogation

8. Alternatively, if Plaintiff prevails in this suit, then Defendant, as Counter-Plaintiff, seeks equitable subrogation to impose an equitable lien on the property in dispute so that it can

recover the funds paid to discharge the debt and lien to San Pedro Real Estate LLC in the amount of \$120,000 at the closing of the sale of the property.

9. Defendant seeks prejudgment interest on the amount of the payoff sum of \$120,000 at six percent interest per annum from July 5, 2022, until final judgment in this case.

B. Protection under 11 U.S.C. §1144

10. Counter-Plaintiff would show that the court confirmed the Chapter 11 plan.

11. Counter-Plaintiff would show that under 11 U.S.C. §1144 Counter-Plaintiff requests that the court provide any provisions that are necessary to protect the Counter-Plaintiff who acquired rights in good faith reliance on the order of confirmation.

WHEREFORE PREMISES CONSIDERED, Defendant Shebilo Management, Inc. respectfully prays that the Plaintiff take nothing in this suit and that Defendant recover its costs; or alternatively that Defendant recover damages against the Debtor, including equitable subrogation, if applicable, plus prejudgment interest, postjudgment interest and for such other and further relief to which it may be entitled, whether in law or in equity.

DATED: September 12, 2023.

Respectfully submitted,

PERRY COCKERELL, P.C.
8117 Preston Road, Suite 300
Dallas, Texas 75225
Telephone: 214-706-9195
Cell: 214-206-6560
Email: perry@perrycockerell.com

BY: /s/ Perry Cockerell
Perry Cockerell
Texas Bar No. 04462500

**ATTORNEYS FOR 2317 PINN ROAD INVESTMENTS,
INC. AND SHEBILO MANAGEMENT, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via electronic service on the 12th day of September 2023, and to the parties and attorneys listed below via email:

Clinton Lee Buck
Branscomb Law
4630 North Loop 1604 West, Suite 206
San Antonio, Texas 78249
cbuck@branscombpc.com

Cynthia Zuniga Puig
Daniels & Daniels
Oak Ridge Square, Suite 301
11120 Wurzbach Road
San Antonio, TX 78230
cynthiapuig@danielslawfirm.com

Steven G. Cennamo
Law Office of Cennamo and Werner
8546 Broadway, Suite 100
San Antonio, TX 78217
scennamo@cennamowernerlaw.com

Salim A. Merchant
27015 Granite Path
San Antonio, TX 78258
salimmerchant04@gmail.com

/s/ Perry Cockerell

Perry Cockerell